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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

May 23, 2003

EX PARTE

Ms. Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
Room TW-A325
The Portals, 445 12th Street, S.W.
Washington, D.C. 20554

Re: Oral Ex Parte Presentation
CC Docket Nos. 02-33, 95-20, 98-10, 02-52

Dear Ms. Dortch:

On Thursday, May 22, 2003, BellSouth made an oral presentation relating to the dockets identified above to Matthew Brill, Senior Legal Advisor to Commissioner Kathleen Q. Abernathy, and Christopher Libertelli, Legal Advisor to Chairman Michael K. Powell. Representing BellSouth at these meetings were Eric Fogle, Jonathan B. Banks, Sean Lev (Kellogg, Huber) and the undersigned. The attached presentation was distributed at this meeting and formed the basis of the discussion.

Pursuant to section 1.1206(b)(2) of the Commission's rules, this letter and attachments are being provided for inclusion in the record of the above-referenced proceedings.

Sincerely,

Barbee

L. Barbee Ponder IV

BellSouth Ex Parte on the FCC's Broadband Proceedings

May 22, 2003

ILECs Are Not Dominant in the Broadband Market

- Wall Street Journal Headline: "*How Phone Firms Lost to Cable in Consumer Broadband Battle*", March 13, 2003

- The evidence and level of competition has been documented in numerous studies, including the Commission's own Advanced Services Reports

- According to a report released by The Yankee Group last year, cable modem providers will rule the broadband age, at least for the next five years

- The Yankee Group predicted that by the year 2007, over 41 million households will have broadband services
  - Of these households, 24.2 million will have cable modem service, while only 13.8 million will have DSL service

- Long distance carriers dominate business Internet access services

Previous Commission Findings on Dominant Carrier Regulation Establish Costs of Regulation

- **Commission has repeatedly affirmed that tariffing is not necessary to ensure reasonable rates for carriers that lack market power.** *PCIA Petition for Forbearance For Broadband Personal Communications Services,* WT Dkt No. 98-100, *MO & O and NPRM,* 13 FCC Rcd 16857 at ¶ 57 (1998); *Tariff Filing Requirements for Nondominant Common Carriers,* CC Dkt No. 93-36, *Order,* 10 FCC Rcd 13653 at ¶ 11 *(1995).*

- **Tariff regulation of non-dominant carriers is not only unnecessary to ensure just and reasonable rates, but is actually counterproductive since it can inhibit price competition, service innovation, entry into the market, and the ability of carriers to respond quickly to market trends.** *Tariff Filing Requirements for Nondominant Common Carriers,* CC Dkt No. 93-36, *MO & O,* 8 FCC Rcd 6752 at ¶ 2 (1993).

- **Long tariff notice periods severely distort the market if the carrier is no longer dominant.** *Comsat Corporation Petition for Forbearance from Dominant Carrier Regulation and for Reclassification as a Non-Dominant Carrier,* File No. 60-SAT-ISP-97, *Order and NPRM,* 13 FCC Rcd 14083 at ¶ 66 (1998).

- **Contract carriage increases the ability of customers to negotiate service arrangements that best address their particular needs.** *Revisions to Price Cap Rules for AT&T,* 10 FCC Rcd 3009 at ¶ 27 (1995) *(quoting Competition in the Interstate Interexchange Marketplace,* CC Docket No. 90-132, *Report and Order,* 6 FCC Rcd 5880, 5899 (1991)).

Computer Inquiry Requirements

- As the Commission stated in the Cable Modem Declaratory Ruling, the core assumption underlying the *Computer Inquiries* was that the telephone network was the primary, if not exclusive, means through which information service providers could gain access to customers
  - *This premise simply is no longer true*

- Commission requires BOCs to tariff the telecommunications component underlying all information services to ensure third-party access to network capabilities

- BOCs must prepare and file a tariff for all network capabilities that will be used in connection with the provision of any enhanced/information service that the BOC offers

- BOCs must develop and maintain a Comparably Efficient Interconnection (CEI) plan prior to offering any new enhanced/information service

- BOCs must maintain an Open Network Architecture (ONA) and file annual ONA reports and quarterly ONA Installation and Maintenance Nondiscrimination reports

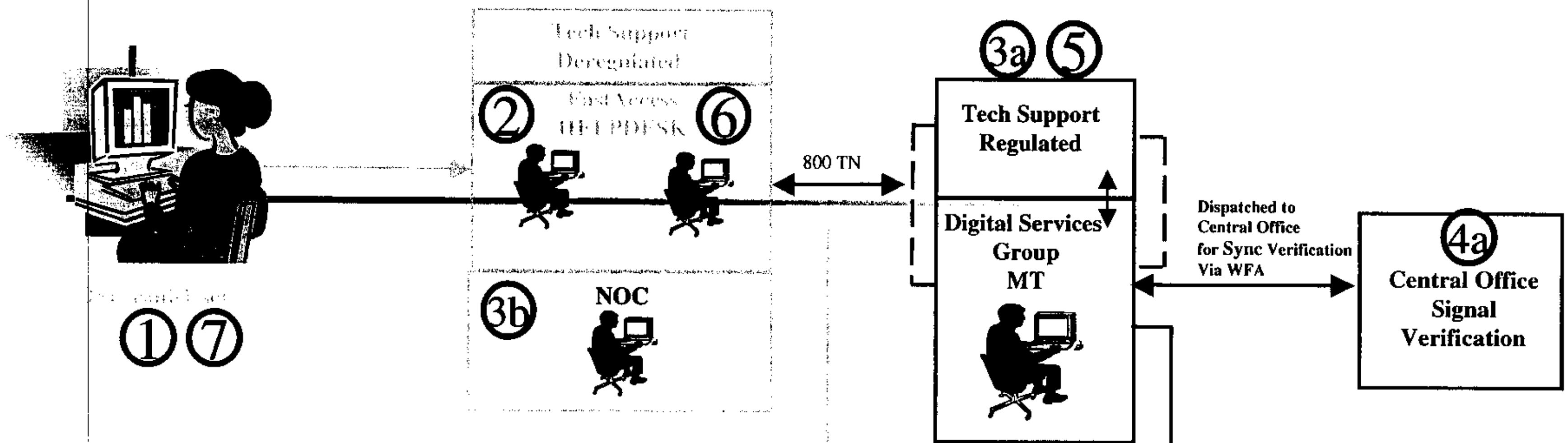
Computer Inquiry Obligations Harm Competition and Consumers By Tipping The Playing Field - Innovation

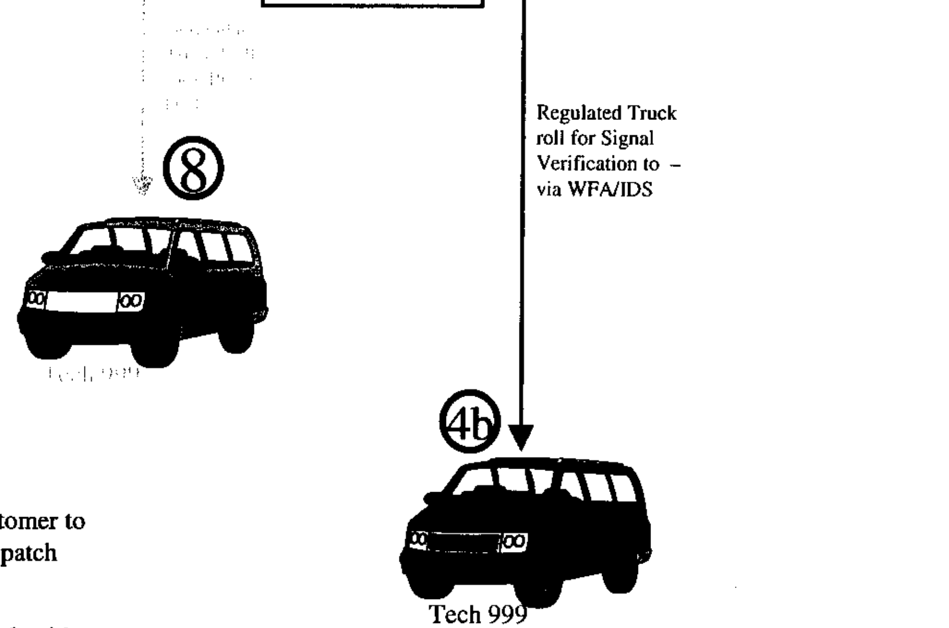
- Obligations harm broadband competition and reduce consumer welfare by slowing innovation, increasing costs and reducing competitive flexibility of one set of competitors
- Reduced and delayed innovation has a huge economic impact
- Innovation hurdles include:
  - Tariff development adds lead time to new retail service deployment
  - Tariff complexity hampers development and roll out
  - BellSouth is forced to signal market and competitors with new products
  - Extensive work to create artificial network demarcs for tariffed services. Next-generation equipment does not provide demarcs for regulatory purposes – vendors have no incentive to create demarcs since all but four players don't need or want these demarcs

Computer Inquiry Obligations Harm Competition and Consumers By Tipping The Playing Field - Costs

- Increased costs pervade entire operation, raising capital and expense costs very substantially:
  - Network inefficiency – BellSouth is required to tariff services without protocol conversion which is generally inconsistent with ISP customer requirements and requires duplicate infrastructure; also forces BellSouth to maintain inefficient methods of transporting data to ISP by forcing interconnection and access to use same protocols
  - Operations inefficiency – infrastructure and Operational Systems costs to support are significantly increased by ONA and CEI requirements
  - Compliance costs – tariff development, reporting/accounting – in many cases, BellSouth has to develop two services to introduce one to the market which brings an estimated cost penalty of $500k minimum per new service

Digital Subscriber Line Maintenance Trouble Reporting/Clearing





Step 1: Customer calls the De-regulated help desk

Step 2: De-regulated help desk trouble shoots with the customer and can not resolve.

Step 3a,b: De-regulated help desk calls the regulated Help desk to run test on the Regulated Network. De-regulated may also work with the deregulated NOC while working with the regulated Help Desk.

Step 4a,b: Regulated Desk can dispatch in to the central office or out to a field tech if they suspect a Network issue. Tech works with the regulated (non-appointed dispatch)

Step 5: Regulated help desk updates the de-regulated Help Desk on dispatch results.

Step 6&7: Deregulated Help Desk receives updates and contacts customer to trouble shoot further and may dispatch a Deregulated Dispatch (Specific Appointment with Customer).

Step 8: Deregulated dispatch to resolve CPE problems. Tech can work with the Deregulated Help Desk.

Computer Inquiry Obligations Harm Competition and Consumers By Tipping The Playing Field - Costs

- Examples of increased day-to-day operating costs from Computer Inquiry obligations include:

- Customer trouble handling processes for deregulated services require redundant systems and centers personnel. Affected services include Digital Subscriber Line (DSL), Dedicated Internet Access (DIA), Business T1(Biz T1), RBAN.
  - Estimated Annual Cost: **$13.5M+** annually

- Dual dispatches are often required to correct a customer reported problem as the true cause of the problem can not always be determined via remote testing. Technicians dispatched on a deregulated customer trouble can not correct network related problems without going through the network ticketing process which creates a second dispatch often one or more days later and the same technician. Installation orders require similar separation. Services involved include DSL, DIA, Biz T1, RBAN.
  - Estimated Annual Cost: **$6.0M+** annually

Computer Inquiry Obligations Harm Competition and Consumers By Tipping The Playing Field - Costs

- Unnecessary system redundancy and cost is generated by the requirements and separation. (Examples include e-repair, Service Assurance & Repair Tool, Consolidated Retail GUI, DSL Appointment Database)
  - Estimated Cost: **$9.5M +**

- Alarm monitoring/surveillance must be separated for deregulated and regulated equipment. This includes the use of different monitoring systems and alarm clearing processes. Services involved include DSL, DIA, Biz T1, RBAN
  - Estimated Annual Cost: **$2.0M+** annually

Computer Inquiry Obligations Harm Competition and Consumers By Tipping The Playing Field – Flexibility

- Competitive flexibility issues include:
  - Inability to pass along savings of more efficient architectures to customers since tariff serves as price floor
  - Inability to change terms of offerings at customer requests without re-tariffing
  - Inability to pursue new business models/risk sharing
- Wireless DSL
- Universal Service contribution

Impact of USF on ISPs

	Without USF contribution	With USF contribution
Tariffed DSL service	$33 / month	$33 / month
ISP Operating Costs	$11 / month	$11 / month
Retail Broadband	$50 / month	$50 / month
USF contribution	$0	$3 (9.1% contribution rate)
ISP Operating Margin	$6	$3
Percent Reduction in Operating Margin		**50%**

Two-mile Rule From *Computer Inquiry III*: Another Example Of Mandated Inefficiency

- Commission requires the BOCs to impute a two-mile transport cost between tariffed service demarc and the information service demarc to establish parity with third-party ISPs

- The effect of this requirement is significant:
  - Despite numerous independent analyses that cable operators have a cost advantage over BOCs in providing broadband service, this requirement further increases BOCs' costs and reduces competitiveness
  - Administrative tracking of imputed costs is costly – further disadvantage relative to cable operators

- The requirement is archaic since all packet traffic is efficiently aggregated and BOCs must support collocation agreement with competitors/ISP

BellSouth and Earthlink Expand High-speed Pact

- Announcement made March 24, 2003

- BellSouth expanded its agreement with Earthlink, which will allow Earthlink to sell high-speed services to more markets in the southeastern U.S.

- Under the agreement, Earthlink will use BellSouth's broadband network to serve an additional 4.5 million households

- Earthlink will expand its presence to 79 southeastern cities, up from 15 markets currently

National Broadband Policy Requires Preemption of States

- In the *Triennial Review* proceeding, FCC recognized need for national broadband policy to spur development and deployment — *the FCC needs to be clear in these proceedings that states may not undermine these policies*

- In the Line Sharing Order, FCC ruled that ILECs are not required to provide their DSL service over UNE-P
  - When a carrier purchases UNE-P, it has access to all features and functions of the entire loop
  - Line splitting is available where voice and data are provided by someone other than the ILEC
- Nonetheless, 3 states in BellSouth's region have ordered BellSouth to provide DSL service over UNE-P—in direct contravention of the FCC's rules
  - State orders impose differing obligations
- These state rulings require millions of dollars in system development that could be used instead to further deployment of DSL

In the Broadband Proceedings, the Commission Must...

- Follow precedent that Computer Inquiry-type obligations impose real competitive handicaps that can harm competition and consumers
- Follow precedent that similar services must be subject to similar regulation
- Put into place a national framework that recognizes that head-to-head competition between facilities-based providers will maximize consumer benefits
- Reaffirm conclusion that broadband Internet access services are information services
- Eliminate the *Computer Inquiry* requirements for broadband services
  - Eliminate tariff, CEI, and reporting requirements
  - Eliminate the requirement to offer separately the wholesale component of a retail service
- Allow ILECs to offer stand-alone broadband transmission services as private carriage and not common carriage
- Preempt state regulation of broadband services